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A
V I E W
OF THE
E N G L I S H
CONSTITUTION.

By the late Baron DE MONTESQUIEU.

B E I N G

A Translation of the Sixth Chapter of the Eleventh
Book of his celebrated Treatise, intitled

L'ESPRIT DES LOIX.



L O N D O N:

Sold by B. WHITE, HORACE'S HEAD, Fleet-Street;
and H. PAYNE, in Pall-Mall.

MDCCLXXXI.

[Price ONE SHILLING.]

VOLUME

OF THE

ANGLAIS

CONSTITUTION.

By the Hon. Baron De Montaigne.

BEING

A Translation of the 2nd Chapter of the 1st Book

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AN
A C C O U N T
OF THE
E N G L I S H
C O N S T I T U T I O N.

*Of the three Powers of Government
that must exist in every Civil Society,
the Legislative, Executive, and Ju-
dicial Powers.*

I.  N every civil government there must necessarily exist these three sorts of power ; the legislative power, or power of making laws ; the executive power with respect to those acts of state which relate to the law of nations ; and the executive power with respect to the internal government of the country, or to those domestic exertions of authority which are directed by the civil, or municipal, laws established in it.

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II. By

II. By virtue of the first of these powers the prince, or other sovereign magistrate, makes laws for the state, and ordains them to be in force either for a limited time, or for ever, as he thinks fit; and by the same power he amends, or abolishes, the laws already in being, as he sees occasion. By virtue of the second power he makes peace or war, sends ambassadors to foreign states, or receives ambassadors from them, takes the necessary measures for securing the dominions of the state from armed violence, and for preventing and repelling any invasions of them by foreign enemies. By virtue of the third power he punishes the crimes that are committed in his dominions, and decides the civil disputes that arise in them, or, in other words, administers justice both criminal and civil. This latter part I shall henceforth call *the power of judging* or *the judicial power*, and the other branch of executive power I shall call simply *the executive power of the state*.

The true notion of political liberty.

III. True political liberty in a member of any civil community, is that ease and serenity of mind which is the consequence of a firm opinion in the several members of the state that, so long as they abstain from offending against the

the laws, they shall be perfectly safe and have nothing to fear from any body. It is therefore necessary to the general enjoyment of liberty, understood in this its true sense, that the several powers above-mentioned (which must necessarily exist somewhere in the society) should be so distributed and parcelled out into different hands that no member of the state may, by means of them, become formidable to any other member of it.

IV. When the legislative power and the executive power are both vested in the same person, or persons, whether it be in a king, or other single person, or in a senate, or council, consisting of several persons, the people at large cannot be free: because there is reason to fear that the king, or senate, who are possessed of both these powers, may make use of both to the prejudice of the people, by, first, making oppressive laws concerning them, and then executing those laws in an oppressive manner.

Of the union of the executive and legislative powers.

V. Secondly, the people can enjoy no liberty in a state, unless the *judicial power* is separated from both the legislative power and the executive power. For, if it was united to the legislative

Of the union of the judicial power with either the legislative or the executive power.

lative power, that is, if the same persons were to be both legislators and judges, they would have an arbitrary authority over the lives and liberties of the other members of the state. For, if they passed judgements that were contrary to the laws, those judgements would nevertheless be considered as being agreeable to the laws, because the judges themselves in their other capacity of legislators, or makers of the laws, and consequently interpreters of them, would have a right to declare that they were so. And, on the other hand, if the judicial power was united to the executive power, or the person, or persons, who had the latter power, (which involves in it the command of all the military force in the state,) were likewise to have the power of judging, such judges would be so extremely powerful that there would be no hope of obtaining any redress against them in case they passed unjust and oppressive judgements.

Of the union
of all the three
powers afore-
said.

VI. And therefore, thirdly, there would be no shadow of liberty left in a state, if all these three great powers, "of making laws, carrying into execution the publick measures of the community, and deciding criminal and civil suits," were to be united in the same persons, wheher

whether it were in the hands of one man, or of a single body of hereditary nobles, or other eminent persons in the state, or even, of a single body of inferior persons selected from the people at large.

VII. In most of the kingdoms of Europe the government, though not perfectly free, is yet moderate, because the sovereigns have kept in their own hands only the legislative and executive powers, and have given up to their subjects the exercise of the judicial power. Whereas in Turkey, where all the three powers are united in the person of the Grand Seignior, we see a most dreadful degree of arbitrary power pervades the whole country.

Of the European monarchies.

Of the government of Turkey.

VIII. In the modern commonwealth governments in Italy, in which these three powers are united in the same bodies of men, the people enjoy a less degree of liberty than in our European monarchies. And accordingly the governing powers in some commonwealths, in order to maintain their authority and prevent the ill consequences of the dissatisfaction of the people, are obliged to have recourse to methods that are nearly as violent as those which are used

Of the modern commonwealths of Italy.

in

in the Turkish government. Witness the State-Inquisitors at Venice, and the public box, or trunk, in which any informer has a right at any time to put a written accusation against any member of the state.

IX. Let us consider a little what the condition of a private member of one of those commonwealths is. One and the same body of magistrates in these states exercises in particular cases, as judges or executors of the laws, those powers with which, in their other capacity of legislators, they have chosen to invest themselves. They may, first, oppress the people by their general resolutions, or laws, and afterwards may ruin particular members of the community by their particular resolutions, or determinations as judges.

X. All the different powers of government are in these states combined together under the same direction ; and, though there are no circumstances of outward shew and splendour to point out to the people *who* their masters are, yet every man feels, at almost every instant of his life, that he *has* such masters, to whom it is absolutely necessary he should submit, and over
whose

whose actions, in the ordinary course of things, the body of the people have no controul.

XI. Accordingly we find that those princes, or other eminent and ambitious men, who have aimed at making themselves absolute masters of the states they lived in, have always begun the execution of that design by drawing to themselves, and uniting in their own persons, the several different great magistracies of the state: as several kings in Europe have taken to themselves the several great offices in their respective kingdoms.

XII. I believe, however, that the pure hereditary aristocracy that is established in the several commonwealths of Italy may not make those governments quite so absolute as those of the Turkish and other Asiatic monarchies. The greatness of the number of the magistrates, who are invested with the powers of government in those republicks, may probably somewhat soften the exercise of the powers belonging to the magistracies themselves; all the nobles are not always engaged in the same designs; and different tribunals, though formed of the same body of the nobility, are composed of different members of
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of that great body, and are invested with different authorities: so that they in some degree serve as a check and restraint upon each other. Thus, in the government of Venice, the *Great Council* are invested with the legislative power, the *Pregady* has the executive power, and the *Council of Forty* has the judicial power. But the misfortune is, that these several tribunals, though they are invested with distinct authorities, yet are composed of magistrates who are, all of them, members of the same body in contra-distinction to the body of the people at large: and *that* degree of connection with each other makes them too much *one power* for the people who are governed by them to be truly free.

Of

Of the Judicial Power.

XIII. **T**HE power of judging ought not to be vested in a permanent senate, or council, consisting always of the same members, but should be exercised by persons taken from the body of the people at certain appointed times of the year in a manner prescribed by the laws, so as to form *an occasional tribunal* that shall exist no longer than the cause which gives rise to its creation. This was the practice formerly at Athens, and is so at this day in England by means of the excellent mode of trial by juries which is there established.

XIV. By means of this precaution the power of judging, (which is in its own nature so formidable to mankind,) not being annexed either to persons of any particular rank, or order, in the state, or to the members of any particular profession

feſſion in it, becomes in a manner inviſible and, as it were, non-exiſtent : — the people have not before their eyes the conſtant and alarming view of perſons who are authorized, if they ſhould be charged with the commiſſion of any crimes, to ſit in judgement upon them ; and ſo they become exempt from all fear of *particular men* on that account, and retain only a general dread of the magiſtracy itſelf in the abſtract, by which they may be brought to puniſhment.

XV. And in ſome caſes it is proper to take even further meaſures than this “ of making the tribunals of juſtice occaſional,” in order to abate the terrors which naturally follow the exerciſe of the judicial power. It is fit that in trials for offences of the higher claſſes, which are attended with the ſeverer puniſhments, ſo as to affect men’s lives or limbs ; — it is fit, I ſay, that in theſe trials the criminal himſelf ſhould have ſome ſhare, in conjunction with the law, in chuſing the judges by whom he is to be tried ; or, at leaſt, that he ſhould be allowed to reject and ſet aſide at his pleaſure ſo many of thoſe perſons who ſhall be appointed by the officers of juſtice, according to the known directions
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of the law, to be his judges, that he may be reasonably considered as having given his consent to the nomination of the remaining persons who have been appointed for his judges and have not been rejected by him. And this is the case in England in all trials for treason or felony; the prisoner being allowed in these trials to reject or *challenge*, (as they express it,) at his discretion and without assigning any reason, a great number of the persons nominated by the sheriffs to be members of the jury that is to try him,—in trials for high treason no less than 35 persons.

XVI. The other two great political powers, the legislative and executive, might with much less danger to publick liberty, be vested in a single person or in a permanent body of magistrates, composed always of the same persons; because those powers do not affect the condition of particular members of the state; the first of them being the declaration of the general will, or resolutions, of the community, and the latter the power of carrying such general will, or resolutions, into execution.

XVII. But,

XVII. But, though the tribunals of justice ought not to consist of fixed and permanent bodies of men, the decisions they make upon the persons, or matters, brought before them ought to be as fixed and uniform as possible, so as to constitute a precise and clear body of known law. For, if they were to vary from each other, or different judges were in similar cases to make different determinations, according to their several different opinions concerning them, and without regard to the decisions of their predecessors, the people would live in such a society without knowing with certainty the extent of the obligations and engagements they entered into, and the duties they were expected to perform.

XVIII. Another thing requisite to soften the terrors of the judicial power is the rule (which is also observed in the trials by jury in England,) "that the judges, by whom a criminal is to be tried, shall be of the same class, or order of men, as the criminal himself, or (as they express it in England,) shall be *his peers*." This rule is necessary to prevent the criminal, and at the same time all other persons of the same rank

rank and condition as the criminal, from entertaining a suspicion that he is fallen into the hands of persons who are inclined, from the difference of their rank and condition in life, to treat him with unjust severity.

of

Of the Security of Personal Liberty.

XIX. **I**F the legislative body in a state was to entrust with the executive magistrates a right of imprisoning men at their pleasure upon suspicion of some intended mal-practices, or even a power of detaining them in prison upon a charge of a small offence, or misdemeanour, when the parties accused were able and willing to give reasonable bail for their appearance to stand a trial for their offences, there would be an end of all liberty. But this observation must be confined to the lesser crimes. For, if a man is charged upon oath, and arrested, for a capital crime, it is no breach of liberty to refuse to admit such a person to bail, provided he be detained in prison only for a short time and then brought to his trial, without any unnecessary delay, to answer the accusation brought against him. In
such

such a case the prisoner might justly be said, though detained in prison, to be still a free man; since his detention in prison would not be the effect of the mere will and pleasure of another man, but of the directions of the law itself, in a perfect submission to which true liberty consists.

XX. But, if the legislative body should apprehend its own existence to be in danger, either from some secret conspiracy against the state by domestic traitors, or from the intelligence, or other encouragement, given by such wicked members of the state to its foreign enemies; it would be reasonable and prudent, in such a case of extraordinary danger, for the legislative body of the nation to vest in the executive magistrates, for some very short and limited time, a power of causing suspected persons to be apprehended and detained in prison, without being admitted to bail, at their discretion. For, though this, it must be owned, would be an invasion of the publick liberty, it would be only a temporary invasion of it, and would be sufficiently compensated to all true lovers of their country by the tendency it would have to prevent

vent the success of those wicked designs by which the publick liberty might otherwise be destroyed for ever. And this is the method taken by the English Parliament, when they sometimes, in a great crisis of war or rebellion, suspend, for about six months, the operation of their famous *Habeas Corpus* act, which was passed in the 31st year of the reign of king Charles II. for the more effectual preservation of personal liberty.

XXI. And this is the only reasonable method by which the government of a state can, upon great occasions, supply the want of such a tyrannical magistracy as that of the Ephori at Sparta, or that of the State-Inquisitors at Venice, which is no less arbitrary than the other.

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of

Of the Legislative Power.

XXII. **I**N the next place it is necessary to inquire in what hands the legislative power ought to be placed, that the publick liberty may not be endangered by it. And here it seems natural to conceive that, in a free state, every man who may be supposed to have a free mind, or a will of his own, and not to be dependant upon the will of another (as slaves are upon the will of their master,) ought to be governed according to his own will and consent; and consequently that, in order thereunto, the power of making laws ought to be exercised by the people themselves assembled in a body for that purpose. But this, it is easy to see, is absolutely impracticable in a large state, such as England or France, or the other great monarchies of Europe, on account

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count of the prodigious numbers of people they contain, which are much too great to meet together in one place and transact any common business. And it has been found liable to very great inconveniences in lesser states, where it has not been impossible for them so to assemble. It seems necessary therefore that the people should give up their claim of exercising this authority in their own persons, and should content themselves with doing the same thing in a secondary and indirect manner by means of their chosen delegates or representatives.

of

*Of the Election of Representatives of
the People.*

XXIII. **T**HE next thing therefore to be considered, is the manner in which these representatives ought to be chosen.

Upon this subject it may be observed, that men are always better acquainted with the conditions and circumstances of the towns or districts they inhabit, and with the regulations necessary to be made concerning them for their further improvement or for the removal of any inconveniences they may labour under, than they are with the condition and circumstances of other towns, and districts, which are situated at a distance from them. They are also better able to judge of the character and qualifications of the gentlemen, or other persons of note, who live in their neighbourhood, than of those

of persons who live at a distance from them. And from hence it seems reasonable to conclude, that the members of the legislative body of the nation, who are chosen to that office by the people, ought not to be chosen at one grand election by the people assembled together in one body for that purpose, (if such an assembly of them were possible,) nor even by the inhabitants of large districts of the country assembled together for that purpose, but by the inhabitants of single towns, or districts of moderate extent, who should meet together and chuse a single representative.*

XXIV. The great advantage of vesting the legislative authority in the hands of a set of representatives chosen by the people, arises from its being easily practicable for such representa-

* Upon the principle of this observation it would, perhaps, be an improvement in the manner of electing the British parliament, if the members were chosen for the most part by the freeholders of those divisions of the counties of England, called *hundreds*, each hundred sending one member. Such a regulation would also be attended with the further advantages of preventing the tumults that sometimes happen in elections for counties, and the ruinous expences of them when they are contested.

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tives, (partly from the smallness of their number, compared with that of their constituents, the people at large, and partly from their superiour abilities and education,) to discuss and manage publick business;—which is what the people at large are, (from a variety of causes,) utterly incapable of doing. This incapacity is very much felt in pure democracies, where the people attempt to exercise the legislative power in their own persons; and it is one of the greatest inconveniences that are found to result from that too simple mode of government.

XXV. It is not necessary that the people's representatives, after they have received from their constituents a general power to act for them, and general directions concerning the conduct they are to pursue, should receive their particular instructions upon every publick measure that is the subject of their deliberations, as is practised in the Diets of Germany. It must be owned, indeed, that, if this were done, the votes of the representatives would be a more certain indication of the sense of the whole nation, as they always ought, and are supposed, to be. But this advantage would be more than

Of the powers of the representatives of the people, when they have been elected.

counter-balanced by the inconveniences with which such a method of proceeding would be attended: for it would be the occasion of infinite delays, and would put it in the power of every individual representative to stop the resolutions of all the rest, under pretence of waiting for instructions from his constituents; so that on the most pressing emergencies it might happen that the exertion of the whole national force might be prevented by the caprice and obstinacy of only one man.

XXVI. When the representatives of the people, says Mr. Algernoon Sidney very truly, are chosen to represent the inhabitants of a whole separate and independant province that is united with other provinces only by a confederacy, (as is the case with the seven united provinces of Holland,) they ought to give a particular account of every thing that occurs in their deliberations to their constituents, and take their instructions how to act upon the occasion. But it is otherwise when they are deputed by the inhabitants of different towns, or small districts in the country, which are all parts of one and the same intire state, as is the case in England.

Of

*Of the Electors of the Representatives
of the People.*

XXVII. **I**N order to extend the benefits of this free mode of government as far as possible, it is fit that all the inhabitants of the country should have votes in the election of the representatives of their respective districts, except only such of them as are in so very low and dependant a condition as not to be supposed to have a will of their own.

XXVIII. There was one very capital defect in the constitutions of most of the ancient republics; which was, that the people exercised in their own persons a right of taking active resolutions, and which required an exertion of

No part of the executive authority of the state ought ever to be exercised by the people at large :

executive authority. Now this is a branch of government for which the people are singularly unfit. They cannot, with propriety and safety to the state, exercise any branch of government but that of electing their representatives. But to *that* they are fully competent. For, though few men have opportunities of knowing others well enough to take an exact measure of their talents and qualifications for publick business, yet every man is able to distinguish in a general manner whether the person he is inclined to vote for as his representative, is, or is not, a man of better abilities than the greater part of the other candidates for the same honour. And that is all the knowledge and skill that is required for the business of electing a proper representative.

Nor even by the body of their representatives.

XXIX. And it may further be observed, that, not only the people at large, but even the body of representatives chosen by them, is unfit for the exercise of the executive authority of the state. And therefore they ought not to be invested with it, but should be authorized only to make laws, and to super-intend the execution

cution of those which are already in being by the magistrates who are appointed for that purpose. This is a duty which the representative body is perfectly capable of performing, and which indeed cannot be performed effectually by any other persons in the state.

Of the Nobility.

Expedience of
creating a bo-
dy of *nobles*
with peculiar
powers and
privileges.

XXX. **T**HERE are in every state some persons who are distinguished from the rest by a superiority of birth, or riches, or honours. These persons it will be fit and prudent to entrust with a greater share of the publick authority of the state than is allowed to the rest of the people, who are so much their inferiours. For, if the privileges and powers bestowed on them do not, in some measure, keep pace with the other advantages they enjoy, but they are placed upon a level with the rest of the community in these respects, and allowed only a common vote in the election of representatives, and a capacity, in common with others, of being themselves elected to that office by the people, they will be apt to think themselves hardly treated, and will consider

consider this plan of general liberty and equality as an unjust degradation of their dignity and an infringement of those rights which they will esteem to be natural appendages to the other advantages they possess. And they will not be interested in the preservation of such a form of government ; because they will, with reason, apprehend that many of the publick resolutions that will be adopted under such a constitution will be levelled against themselves and the advantages by which they are distinguished. In order therefore that they may be able to preserve these advantages, it is proper that they should be invested with a greater share of the legislative authority than is allowed to the other members of the community : and, with this view, it will be convenient to permit them to form a distinct legislative body in the state, with a power of rejecting, and rendering ineffectual, the resolutions of the other legislative body above-mentioned, which is composed of representatives chosen by the people ; as the body of the people's representatives ought in like manner to have such *a negative*, or power of rejection, with respect to the resolutions of their body.

The body of nobles ought to be invested with a part of the legislative authority of the state.

XXXI. And thus the legislative power of the state will be vested in two distinct bodies of men, namely, a body of nobles, and a body of the chosen deputies, or representatives, of the people; which will have separate places of meeting for the dispatch of the publick business, and will also be influenced by different views and aims, and have, in some respects, different interests from each other, though equally concerned in the general welfare of the state. And such bodies are the two houses of Lords and Commons that compose the Parliament of England.

XXXII. Of the three great powers, which we have mentioned above, as necessarily belonging to every civil society, the judicial power is, by the arrangement above-described, removed so far out of sight, and rendered so incapable of inspiring the persons in whom it is vested with ambitious or dangerous designs, that it may almost be said to be annihilated. For its existence is only temporary and occasional in the juries which are summoned, at stated times of the year, to try offenders against the laws, and which are composed, in part at least, of different persons at almost every

every different session of the courts of justice, or occasion on which they are summoned. Such uncertain and, if I may so say, unidentical tribunals can never be supposed to aspire to a domination over their country-men, and therefore can never become objects of suspicion or jealousy to the other members of the community. There remain therefore only the two other great powers in the state, the legislative and executive, which may be supposed to inspire their possessors with designs against the common liberty. Now the possessors of these two powers, (who, we have before observed, ought to be perfectly distinct from each other,) may naturally be supposed to be sometimes at variance with each other. And therefore it will be convenient that there should be some person, or some body of men, in the state, who may be able to mediate between them, and prevent them from making encroachments on the powers they, each respectively, possess. Now this is a province which the body of nobles above-mentioned, (to whom we have already assigned a distinct share of the legislative authority,) will be singularly well qualified, and also naturally inclined, to undertake. And this will be an additional advantage.

Of the utility of the body of nobles in preserving the balance of power between the executive magistrates and the body of the representatives of the people.

advantage arising from the establishment of such a body of nobles with a distinct share of the legislative power of the state, or a negative upon the resolutions of the assembly of the people's elected representatives.

The privileges of the nobles ought to be hereditary.

XXXIII. This body of nobles ought to be hereditary, or their privileges should be transmissible to their children in the same manner as their property is. This seems to be a natural consequence of the establishment of a body of nobility, or of the privileges allotted to them. For, since these privileges are allotted to them on account of their being more distinguished by their birth, and possessed of greater riches, than the other members of the society, there will be the very same reason for allowing those privileges to their children, whose birth will be at least equally honourable, and to whom their property will of course descend. For I must always be understood to be speaking of countries in which the hereditary succession of children to the lands and other property of their parents is, by the ancient and deep-rooted customs of the people, universally established. In these countries therefore, I say, the distinctions and privileges of the nobility, as well as the property which

which is the foundation of them, ought naturally to be descendible to their children.

And there is this further reason why they should be so. Since it is useful (for the reasons already mentioned,) that such a body of nobles, with distinct powers and privileges, should exist in the state, it is, of consequence, to be desired that the said nobles should be so strongly attached to these privileges as to be always ready to exert themselves with spirit, and struggle hard, for the preservation of them. For otherwise these distinctions and privileges (which are naturally odious in a free state, and apt to excite the envy of the other members of the community,) will be in continual danger of being lost; because the rest of the people, being jealous of them, will be often endeavouring, as opportunities shall offer, to get them lessened or abolished. To counter-act, therefore, these endeavours of the people to destroy the privileges of the nobles, it will be necessary that the nobles themselves should be as eager and zealous on the other side in the defence of them: and this zeal and attachment to the distinctions and privileges they enjoy will evidently be much increased

increased by making those privileges hereditary in their families, as well as the riches which are the cause and ground of them.

There are some particular laws, such as those for raising money on the people, which ought not to take their rise in the assembly of the nobility, but only to be consented to, or rejected, by them.

XXXIV. But, as a body of hereditary nobles, that are invested with a distinct share of the legislative authority of the state in the manner above supposed, might be tempted, in the use of that authority, to attend too much to their own particular interests, and to neglect those of the people, it would be necessary to restrain them in the use of this legislative authority, as to the *manner* only in which they should use it, with respect to some of the more important acts of legislation, in the procurement of which the executive magistrates would be deeply interested, and would therefore be likely to endeavour to obtain the consent of the legislature to their establishment by bribery or some other kind of corruption. Such, in a more especial manner, are the laws which are passed for raising money upon the people. In these and, perhaps, some other very important acts of legislation, the body of the nobles ought not to be permitted to take the lead, but only to consent to, or reject,

reject, the propositions that are sent to them from the other branch of the legislature, which consists of the people's representatives: or, in other words, they ought not to exercise their *enactive power*, but only that which we may call their *right of negation*.

XXXV. By the words *enactive power* I understand a right of positively ordaining, or establishing, any thing by one's own authority and of one's own accord and free motion, or of altering, or amending, that which has been so ordained, or established, by another. And by *the right of negation* I understand the right of annulling, or making void, a resolution taken by another: which was the right that belonged to the tribunes of antient Rome. And, though it may seem at first sight that he who has the power of rejecting a resolution made by another must necessarily have likewise a right of approving it, yet, if we consider the matter carefully, we shall find that an approbation so given is nothing more than a declaration made by the giver of it that he does not on that occasion chuse to make use of his *right of rejection, or negation*, with re-
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spect

spect to the matter in question, from which it is evident that such approbation is derived from, and grounded on, the said *right of rejection, or negation*, instead of being the effect of an original and positive right of approbation.

of

Of the Executive Power.

XXXVI. **T**HE executive power ought to be vested in a king : because this branch of civil authority, which there is almost always a necessity of exerting on a sudden and without deliberation, can be exercised with more convenience, and more efficaciously, by one person than by several. The reverse of this takes place in matters of legislation : for they are of a nature to be managed with more ability and success by the joint deliberations of several persons than by the will of only one man.

This power ought to be vested in a king.

XXXVII. And, if, instead of vesting the executive power in a king, the nation were to place it in the hands of an executive council

Inconvenience of vesting it in a body of men, or an executive council.

consisting of persons taken out of the legislative body of the state, they would thereby destroy the general liberty ; because the two great powers of government, the executive and the legislative, would then be united in the same hands, as the same individuals would sometimes actually be, and always be capable of becoming, members of both the legislative and executive bodies of the state.

The legislative body of the state ought to be frequently assembled.

XXXVIII. If the legislative body of the state was to continue for any considerable length of time without assembling for the purposes of its establishment, there would be an end of the publick liberty. For, if such a suspension, or intermission, of the exercise of this necessary authority by the body of men in which it was legally vested, were to take place, the consequence of it would be one of these two fatal events : either the legislative authority would not be exercised at all, and no new laws, or regulations, would be made, notwithstanding the publick exigencies which might require them ; which would be a state of anarchy ; or these necessary laws, or regulations, would be made by the executive magistrate :

gistrate : and in that case the executive magistrate would become the absolute sovereign of the state. The latter of these events took place, in a great degree, in England in the former part of the reign of king Charles I. when, after dissolving his third parliament in the year 1629, he forbore to call another till April, 1640, and governed the nation in the mean while by his royal edicts and proclamations, to which he gave the force of laws, even so far as to raise money upon his people by virtue of them, which is the highest and most difficult exertion of the legislative authority.

XXXIX. On the other hand it would not be of advantage to the publick that the assemblies of the legislative body should never be intermitted. Such a continual attendance would be inconvenient to the people's representatives by taking them too much from the care of their private concerns : and it would also too much engross the attention of the executive magistrate, who would be apt to neglect the important duties of his own department, in order to watch the motions of the legislative body, and defend his own pre-

Yet it ought not to continue always assembled without an intermission.

rogatives, and his right of exercising the executive authority, against its encroachments.

XL. And farther, if the legislative body was to continue always assembled, there would be some danger of its becoming a permanent council, whose members, when once chosen, would keep their seats for life, without any further dependance on the people at large, and that there would be no more elections of new members except upon the vacancies caused by the death of the old ones. And if this were to be the case, and the legislative body should once grow corrupt, so as to pursue a private interest of its own distinct from that of their constituents, the mischief would be absolutely incurable. When the whole legislative body is elected anew from time to time, and the period of its continuance is not very long, the people, if they dislike the proceedings of one such body, may reasonably hope for a different line of conduct from the next, and, in that hope, may bear their present hardships with patience: but, if the very same body of men was always to continue in possession of the legislative authority, and their temper and measures

And it ought to be elected anew by the people from time to time, and with only moderate intervals of continuance.

measures were once to become corrupt, or unfriendly to the interests of the people*, the people could never entertain any hope that they would change them; and, in consequence of this gloomy situation, they would either break out into violence to procure redress, or sink into a state of indolent submission, and lose all sense of liberty and public interest.

XLI. The legislative body ought not, when chosen, to meet of its own accord. This is a consequence of its being a political body, it being the nature of such bodies to act only in a joint manner when they are legally assembled for that purpose. They cannot therefore express their resolution to be assembled before they actually are assembled. And, if they could be supposed to have a right to assemble of their own accord, it might be attended with great inconvenience and confusion. For, let us suppose that some of the members of this

The power
convening the
legislative body
ought to be
vested in the
king.

* This inconvenience was complained of in England with respect to the second parliament of king Charles the II. called the *Pensioner Parliament*, which was called in the year 1661, and continued in being till the year 1679.

body, and even a considerable number of them, but less than a majority of the whole body, were to assemble at any time in this manner, or of their own accord: could this assembly be considered as the whole legislative body, or as legally possessed of the powers of the whole body, while the greater part of it chose to stay away? certainly it could not. And even if the members so met were a majority of the whole body, they ought not to be so considered, unless there were some known and established, legal, method of informing the other members, that such a meeting was intended to be held, and that they were desired to be present at it; that is, unless there were some method appointed by the law, or by something else than the present inclinations of the individual members of the body, to procure such an assembly of it. Without such a provision it must be perfectly uncertain whether the part of the legislative body *that was* assembled, or the other *that was not*, ought to be considered as being legally vested with the powers of the whole body, or rather it might be justly concluded that neither of them was so.

This

This observation, however, relates only to the first meeting of the members of the legislative body, but does not extend to their subsequent meetings. For these might well enough be determined by their own resolutions at the close of their first and every following meeting without either the absurdity or the inconvenience above-mentioned ; or, in the language usually employed in speaking of the English parliament, the power of *proroguing* the legislative body from one time of meeting to another might be exercised by themselves. But, if they had this power of proroguing themselves, it would be attended with another very great and dangerous inconvenience. For it might happen that they would not chuse to prorogue themselves at all, but would continue their meetings without any intermission, which would increase their importance in the eyes of the people, and give them an opportunity, if they entertained such a design, of encroaching on the prerogatives of the executive magistrate. An example of this danger has been seen in the history of England, when king Charles the 1st consented to make the parliament that had

met

The power of *proroguing* the legislative body, after it has been convened, ought also to be vested in the king.

met on the 3d of November, 1640, incapable of being dissolved, or prorogued, without their own consent. They from that moment were continually making those fresh demands and encroachments on the royal authority, which, in little more than a year's time, brought on the great civil war between the king and the parliament.

And, besides this great danger that might arise to the prerogatives of the crown from such a power in the legislative assembly of appointing their own times of meeting, there is another inconvenience that might result from it. There are some times and seasons which are much more convenient than others for the quiet and sober business of legislation;—when neither domestick discontents and dissensions have too much inflamed the minds of the people, nor the necessary preparations against the attempts of foreign enemies have too much engaged their attention and concern to leave them at liberty to deliberate concerning the improvement of the laws. And of these times and seasons the executive magistrate, from the intimate and exact knowledge
of

of all the circumstances of the state with which the exercise of the executive authority must necessarily furnish him, is a better judge than the legislative body. It is therefore proper that the executive magistrate, or king, should be entrusted with the power both of appointing the meetings of the legislative body, and of determining how long they shall continue, or, in other words, *of both convening and proroguing it.*

XIII. THE executive magistrate ought to have a negative on the resolutions of the legislative body. For, if he has not, the authority of that body will be absolute: because, if they are thus invested with the whole power of making laws, they may make a law that shall abolish all the other magistracies in the state, and vest their several authorities in themselves; which, according to what has been already observed, would be attended with the immediate ruin of public liberty.

XIV. But, though it is necessary that the king, or executive magistrate, should have a negative

The king ought to have a negative on the resolutions of the legislative body.

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*Of the Negative of the King or
Executive Magistrate.*

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XLII. **T**HE executive magistrate ought to have a negative on the resolutions of the legislative body. For, if he has not, the authority of that body will be absolute: because, if they are thus invested with the whole power of making laws, they may make a law that shall abolish all the other magistracies in the state, and vest their several authorities in themselves; which, according to what has been already observed, would be attended with the immediate ruin of publick liberty.

XLIII. But, though it is necessary that the king, or executive magistrate, should have a
negative

negative on the resolutions of the legislative body, it is by no means true on the other hand that the legislative body ought in like manner to have a negative on the acts of the executive magistrate. For the legislative and executive powers are essentially different from each other in that very circumstance that makes it necessary to give the possessors of the latter a negative upon those who are entrusted with the former. For the legislative power is in its nature absolute and unlimited, and those who possess the whole of it may make what changes they think proper in the constitution of the government, whenever they please, and thence arises the necessity of distributing it into different hands, and particularly of allotting one share of it to the executive magistrate. But the executive power is naturally limited in its extent; as it can only be employed in executing those laws which have been enacted by the legislative authority, and in conducting those departments of the government which the legislative authority has committed to the care and management of the executive magistrate. Beyond this it cannot proceed a step without a manifest breach of the

But the legislative body ought not to have a negative on the resolutions taken by the king as executive magistrate.

the constitution. And consequently there is no necessity that it should be further limited and shackled, in every particular exertion of it, by an application to the legislative body for their concurrence. And further, if it was to be so limited, it would thereby be rendered incapable of performing the acts of government which properly belong to it, which are for the most part necessary to be done with spirit and dispatch upon the sudden emergencies that call for them. And therefore it must be left free to exert itself without any interruption from the legislative branches of the government.

A remark on the too great power of the tribunes of the people in antient Rome.

And here we may take occasion to observe that the powers vested in the tribunes of the people in the Roman commonwealth were therefore too extensive, because they not only enabled those magistrates to prevent the passing of new laws which they might think pernicious, but likewise to controul the acts of executive power attempted by the other magistrates and by the senate ; by doing which they often brought the state into a very dangerous situation.

XLIV. But

XLIV. But, though in a free state it is not fit that the legislative body should have a right to impede the executive magistrate in the exercise of his lawful authority, it is fit they should have a right to review and inquire into the manner in which that authority has been exercised, and whether the laws which they have enacted have been faithfully put in execution, and, if they have not, to censure and punish the persons who shall appear to have been deficient in their duty with respect to them. This is a right which has often been asserted and exercised with good effect by the English parliament; insomuch that the House of Commons has frequently, from the exercise of it, been stiled *the Grand Inquest* of the nation. And in this respect the English form of government has greatly the advantage of the antient governments of Crete and Lacedæmon, in which the executive magistrates called *Cosmi* and *Ephori* were not liable to be called to account for the wrong things they had done in their administration.

But the legislative body ought to have a right of inquiring into, and punishing, abuses in the exercise of the executive power.

XLV. But, though the legislative body of the state ought thus to be invested with a power

But with an exception of the conduct and person of the king himself, which must be considered as *sacred*, or not liable to censure or punishment.

power of examining the conduct of the executive officers of government, and of punishing the abuses of authority which those officers shall be found to have been guilty of, yet this must be understood to relate only to the inferior officers of that branch of the government, and not to extend to the king, or supreme executive magistrate himself. His *person* must be considered as sacred and placed above the reach of all punishment or coercion; and consequently his *conduct* must be so too. This exemption (which at first sight may appear to be unjust,) is necessary to the preservation of the constitution. For, as the existence of an executive magistrate, that is not dependant on the legislative body, has been shewn to be essential to the establishment of publick liberty,—that the legislative body may not become all-powerful in the state, and, in consequence, oppressive,—it is evident that from the moment the king, or supreme executive magistrate, was either condemned, or called to answer for his misconduct before the legislative assembly, (if such a proceeding were allowed,) there would be an end of all check and controul upon the latter, and consequently of all publick liberty.

XLVI. If such a proceeding were to be authorized by the laws of any state, such a state would not really be *a monarchy*, by whatever name the supreme executive magistrate of it might be called: but it would be a republic without liberty; such as are some of the modern commonwealths of Italy, as we have already observed in the former part of this discourse. Yet, notwithstanding this necessary *sacredness of the royal person*, it must not be imagined that the people would be absolutely unable to procure redress for the injuries they had suffered from the abuses of the executive authority. There are other, and fitter, victims that may be sacrificed to their resentment. When a king abuses his power, he has always some accomplices in his misgovernment, who either advise or execute the wrong measures he pursues. These men are the proper objects against whom the people should direct their vengeance by means of their representatives in the legislative body; and there is no maxim of government that requires that the persons of such offenders should be exempt from punishment. And this is more especially true of those wicked

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The ministers of state, or other persons who have assisted the king in any breaches of the law, or other pernicious measures, are the proper objects of the resentment of the legislative body.

men who *advise* the evil measures of government, and, preferring the temporary, but splendid, advantages which they enjoy from the king's favour as ministers of state, to the more durable privileges which belong to them, as members of a free government, in common with their fellow-subjects, push on their sovereign to overleap the bounds of the constitution and encroach upon the public liberty. And in this respect the English government has the advantage of that which was formerly established in the island of Cnidus.

A remark on the ancient government of the island of Cnidus, with respect to the misconduct of the executive magistrates.

In that government the people chose every year certain magistrates to govern them, who were known by the name of *Amymones*: but the law forbade them to call these magistrates to account for their conduct in their magistracies, even after their time of office was expired. The consequence was, that the conduct of these magistrates, while in office, was often in the highest degree licentious and unjust; and yet the people could never obtain any redress for the injuries they had received from them. See upon this subject Stephen of Byzantium.

The

The government of Rome was more reasonable in this respect. For there it was allowable to call a magistrate to an account for his misconduct, after the time of his magistracy was expired. See the account of the affair of Genucius, the tribune of the people, in Dionysius of Halicarnassus, book 9.

Of the Roman government in that respect

there are two cases in which it is fit as a judicial authority could be vested in the body of nobles.

the first is, they should have a criminal jurisdiction to offences committed by members of their own body.

*Of the Judicial Authority vested in
the Body of Nobles.*

There are three cases in which it is fit that a judicial authority should be vested in the body of nobles.

XLVII. **A**LTHOUGH it be true in general that the judicial power ought not to be vested in either of two bodies that possess the legislative authority, yet there are three exceptions to be made to that maxim; two of which are grounded on the dignity, and other peculiar circumstances, of the person who is accused as a criminal and brought to trial.

In the first place, they should have a criminal jurisdiction to try offences committed by members of their own body.

XLVIII. Men of superiour rank and fortune in a state are naturally the objects of envy to their inferiours; in consequence of which, if, when they are accused of crimes, they were to be brought to trial for them before judges of a much inferiour condition, they would be more

more in danger of being found guilty of the crimes charged upon them than if their rank had been less distinguished; and they would not enjoy the privilege, which, in a free government, is allowed to the meanest of the people, of being tried by their peers. To avoid therefore this injustice, it is proper that, when a nobleman commits a crime, he should not be tried by the ordinary tribunals of the nation, or by juries of men who are not noble, but by that part of the legislative body of the nation which is composed of nobles. This is the first exception to the general maxim above-mentioned, “that the judicial authority ought not to be united with the legislative.”

XLIX. In the second place, it will sometimes happen that the letter of the law, (which may be said to be at the same time both clear-fighted and blind,) is too strict and harsh in its decisions, so that every body shall wish that in those particular cases it could be relaxed. But this cannot be done by the judges of the nation. For they, being (as we have already observed,) only the mouths that pronounce the words, or decisions, of the law,

Secondly, they ought to be a court of appeal in civil matters from the decisions of the ordinary courts of law.

(like mere inanimate instruments, or conduit-pipes, through which it passes,) have no power to relax or modify it. And hence arises a kind of necessity for vesting this power in other hands. And no body of men in the state seems so fit to be trusted with it as that part of the legislative body of the nation which is composed of the nobles, and which we have just now seen to be a necessary tribunal of justice for another purpose. They will be better qualified than any other set of men in the nation, to exercise this useful, but delicate, branch of judicial power, of relaxing the law in favour of the law itself, or departing with caution from *the letter* of it in order the more fully to preserve *its spirit*.

Thirdly, they ought to have a criminal jurisdiction to punish state offenders, upon accusations, or impeachments brought by the other legislative body consisting of the people's representatives, even though such offenders

L. And, in the third place, it may happen that some eminent subject in the state who shall have been employed by the king in the management of publick affairs, shall have made breaches on the publick liberty or other rights of the people, and committed crimes of a dangerous and uncommon nature, which the ordinary courts of justice established in the nation shall not know how, or not dare, to take
should not be members of the body of nobles.

take cognizance of. In this case therefore, as well as in the two former, we must have recourse to the legislative body of the nation. And here it will be proper to employ both parts of that body for this important purpose; but in distinct capacities. The body of elected deputies of the people ought not to be employed as judges on this occasion, because they are the representatives of the people, who are the parties injured and the plaintiffs in the suit; and justice will not permit the same persons to be both parties and judges. They must therefore act only as accusers. And the other branch of the legislature, which is composed of nobles, must be the judges on these occasions. This will be necessary for these two reasons. For, in the first place, it would be below the dignity of the great legislative body, which is composed of the representatives of the people, to appear as plaintiffs in the ordinary courts of justice, and bring their important accusations to be heard and determined by a few jurymen. And, secondly, such a tribunal, if it were invested with this power, being composed of persons who, as well as the house of representatives, are chosen

The reason
of this provi-
sion.

out of the body of the people, would be apt to entertain the same popular prejudices and disgusts against the accused person as the said representatives do, who are his accusers; and even, if, upon hearing the evidence, they should be inclined to think him innocent, they would hardly dare to give a verdict in his favour in opposition to so powerful a body of accusers. For both these reasons therefore, to preserve the dignity of the people, and to secure a fair trial to the person accused, it is necessary that, on these occasions of offences committed against the state, the legislative body that is composed of the representatives of the people should bring their accusation before the other legislative body, which is composed of nobles, who have neither the same interests to bias them, nor the same passions to mislead them.

LI. This is an advantage which the English government has over most of the antient common-wealths, which were liable to this great abuse, “that the body of the people acted both as accusers and judges.”

Of

*Of the Manner in which the King, or
Executive Magistrate, ought to take
a Part in the Exercise of the Le-
gislative Authority.*

LII. **T**HE executive magistrate ought, as we have already observed, to take a part in the framing of new laws by virtue of what we have called above his power of rejection or negation, or, as it is called in English writers, his *royal negative*; without which prerogative he would be in danger of being soon deprived, by the legislative body of the nation, of all his other prerogatives. But the legislative body must not in like manner take a part in the exercise of the executive power: for, if it did, the independence and free agency of the executive magistrate would be thereby destroyed, and, with them, his activity and utility to the publick.

The king ought only to assent to, or reject, the laws proposed to him by the legislative body, without making any alterations in them.

LIII. If

Inconveniences that would arise from a contrary way of proceeding in this matter.

LIII. If the king were to take a more active part in the framing of new laws than that of merely assenting to them, when prepared by the legislative body, without making any alteration in them, there would be an end of publick liberty. For, if he were either to propose the laws themselves at first to the legislative body, or to make alterations or amendments in them, when they had been first prepared by that body, his great dignity and authority would over-awe the legislative body, and induce them to give their assent to the laws, or alterations, so recommended, even though they should not really approve them : and thus the legislative authority would come to be united *in fact*, though not *in form*, with the executive power, or to be vested, substantially, in the crown ; which we observed in the beginning of this discourse to be incompatible with publick liberty. Yet it is necessary that the king should take some part in the framing of new laws, in order to defend his prerogatives against the encroachments of the legislative body. And therefore it is proper that he should act in that matter by means of his *royal negative*, or by simply, either

either rejecting, or assenting to, the laws which are proposed to him.

LIV. In antient Rome the executive power of the state was lodged partly in the senate and partly in the consuls and other magistrates. But neither the senate nor those magistrates had a negative on the legislative resolutions of the people, though the people had such a negative on the resolutions of the senate. This was a fatal defect in that government, and was the cause of its final ruin. The people's power of legislation, being under no controul from the senate, came at last to be so outrageously abused that it produced those violent commotions which brought on the civil wars, and ended in the establishment of a military and absolute monarchy in the person, first of Julius Cæsar and afterwards of Octavius, or Augustus, and the succeeding Roman emperors.

The want of a right in the executive magistrates at Rome to put a negative on the legislative resolutions of the people was productive of great evils in that commonwealth, and, at last, of its total ruin.

LV. This therefore is the fundamental constitution of the government of which we are speaking. The legislative power being lodged in two separate bodies of men, each

A summary view of the manner in which the legislative authority of the state is to be exercised in the English government.

of these bodies will be a check upon the other by its right of rejecting and annulling the other's resolutions ; and both, when they agree with each other, will be controuled by the negative of the executive magistrate, as the executive magistrate will, in his legislative capacity, be controuled by the legislative body.

An objection that may, perhaps, be made to such a distribution of the legislative authority.

The answer to the said objection.

LVI. As these three powers will mutually counter-act and balance each other, it may be thought, perhaps, that they will produce a state of rest, or inaction, in the political society that is governed by them ; just as, in the doctrine of the mechanical powers, it is found that three weights, that draw a body in three different directions, will, if they are properly proportioned to each other, exactly defeat each other's operation, and preserve the body in a state of rest. And in both instances this will really happen, so far as relates to any *relative* motion in the direction of any one of the three powers or weights : no motion will be produced in such a direction. But it is possible in both cases that the whole system may be carried forwards by a motion common to all its parts, occasioned by some external force.

And

And this will really happen in the case of our threefold political society from the necessity which the natural course of things will impose upon its constituent parts to make *some* motions, or adopt *some* publick measures. Such motions will be made, or such publick measures adopted, with the joint consent and concurrence of all the three parts, and without any change in their mutual relations to, and dependance on, each other.

LVII. As the executive magistrate, in this government, takes no part in the business of making new laws any other way than by the use of his negative, or power of rejecting, or assenting to, them, he cannot with propriety take any share in the debates of the other branches of the legislature concerning them. The king, or executive magistrate, ought not to take any share in the debates of either of the legislative bodies concerning any new laws.

And it is not even necessary that he should ever propose any new laws to those other branches of the legislature. It is sufficient that he has the power of rejecting, or disallowing, the resolutions taken by those other branches, when he disapproves them and wishes they had not been taken.

LVIII. In

Difference of
England in
this respect
from some of
the common-
wealths of an-
tiquity.

LVIII. In some of the commonwealths of antiquity, in which the people did not chuse a body of representatives to exercise the legislative power for them, but exercised that power themselves in a body, it was necessary that the executive magistrates should have a right of proposing the matters that were to be the subjects of their discussion, and of debating them with the people; as, from the great numbers of men that were assembled on those occasions, and the extreme unfitness of much the greater part of them for the discussion of publick affairs, there would otherwise have arisen a dreadful degree of confusion in their proceedings every time they had met. But this necessity can have no place in a government, like that of England, in which the people have delegated their power of legislation to a body of representatives.

of

*Of the Laws made for imposing Taxes
on the People.*

LIX. IF the executive magistrate were to take an active part in the imposition of taxes on the people, or to do any thing more in that business than simply to give his assent to such laws as are made for that purpose by the people's representatives, there would be an end of publick liberty; because the executive magistrate would thereby become possessed of the legislative authority of the state in that which is the most important branch of that authority. The encroachments therefore of the executive magistrate in this particular ought to be guarded against by all lovers of publick liberty with a singular degree of jealousy.

It is more especially improper that the king, or executive magistrate, should take an active part in the framing of any laws that are made for the imposition of taxes.

LX. If

And the taxes raised by the legislative body for the support of government, ought to be raised only from year to year.

LX. If the legislative body of the state was to provide the necessary taxes for the support of government once for all by a perpetual law, instead of doing so by new acts every year, they would be in great danger of losing their share of authority in the government, and of thereby ruining publick liberty. For they would thereby make the executive magistrate independant of them with respect to this very important article: and, when the executive magistrate once found himself permanently possessed of this great power of levying money on the people during his life, he would be pretty indifferent about the manner in which he had acquired it, and would be little restrained in his attempts to gain still more authority by the reflection that this great power had not been originally inherent in him, but had been conferred upon him by the legislative body of the nation. The legislative body of the nation ought therefore to be cautious not to grant to the Crown the revenue requisite for the support of government for any longer time than one year, lest they reduce themselves to contempt and insignificance.

LXI. The

LXI. The same observation may be made concerning the military forces by sea and land, with which the legislative body of the nation entrusts the executive magistrate. These ought, in point of prudence, to be established only from year to year, lest the executive magistrate should become independent of the other branches of the legislature.

And the military forces of the state, both by sea and land, ought in like manner to be raised only from year to year.

LXII. And other precautions are necessary to be taken against the dangers arising from the establishment of an army; which will otherwise prove a ready and powerful instrument in the hands of the executive magistrate to oppress the people withall and destroy the publick liberty. To prevent these dangers it is necessary that the armies which are committed to the government of the executive magistrate should entertain the same sentiments, and be actuated by the same spirit, as the rest of the people; as was the case at Rome till the time of Marius. And to effect this important purpose there are only these two methods to be taken; either, in the first place, to compose the army, soldiers as well as officers, intirely of persons who have such

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Other precautions necessary to be taken against the dangers arising from an army.

a quantity of property in the country as may place them above the temptation of setting up a separate interest of their own, distinct from that of their fellow-subjects, and may make them zealous for the preservation of the laws and liberties of their country, by which alone their property can be effectually secured ; and to establish even such an army only from year to year, so that they may never be induced to consider themselves as a permanent body, independent of the civil authority of the state ; which was a precaution long observed at Rome, where the soldiers were enlisted only for a year : — or, in the second place, if the soldiers are enlisted for an indefinite time of service, and are men of little or no property, taken from the lowest class of the people, it will be necessary to reserve to the legislative body of the state a power of disbanding the army whenever it thinks fit ; and it will likewise be necessary to take care that the soldiers shall always, except in time of actual service, be quartered among the other subjects of the state, so as to live in the same manner as they do, and to form alliances and other connections with them, and to contract, as far as possible, the same habits and ways of thinking

ing as they are governed by : in order to which they ought never to be encamped in time of peace, nor stationed in barracks or in fortified towns.

LXIII. These precautions are necessary to prevent, or lessen, the prodigious dangers to publick liberty which arise from the establishment of an army : which are indeed so great that one would be tempted to wish that an army should never be established. But it will sometimes happen that the publick exigencies make it necessary to run this risk, and venture upon the establishment of an army. Now, when this unhappy necessity arises, and the army is once raised, it must not be governed by the orders of the legislative body of the state, but by the executive magistrate. This arises from the very nature of an army, as its use and excellence depend chiefly on the vigour of the counsels by which it is governed, which requires speed more than deliberation, and therefore can better be exerted by the executive magistrate than by a numerous assembly of men, such as the legislative body of the state.

When an army is raised, it must be governed solely by the king, or executive magistrate.

LXIV. But there is another and a stronger reason to be given for this manner of disposing

Otherwise there will be reason to fear that the army will usurp the whole power of the state.

of the command of the army; which is, that it is the only means of preventing the government from becoming wholly military, or the army from assuming to themselves the whole power of the state. This is a consequence that, without such a precaution, would necessarily follow from a way of thinking that is natural to the generality of mankind. They have commonly more respect for qualities of an active kind, such as courage, a spirit of enterprize, and bodily strength, than for those of a contrary nature, such as caution, prudence, and wisdom in deliberation. The soldiers of the army, therefore, under the influence of this general way of thinking, will respect their own officers, who may be supposed, for the most part, to possess the former qualities, more than they will a senate, or assembly of civil magistrates, who excel only in the latter. Nay, they will probably despise such an assembly, as being composed of a parcel of helpless, timorous, old men, unworthy to command them, and will consequently neglect and disobey any orders they shall receive from them, and regard only those they shall receive from their own officers. And thus by vesting the command of the army immediately and solely in the legislative

lative body of the state, the very contrary effect to that which would have been intended by such a regulation, would be produced ; the liberties of the nation, instead of being preserved, would be instantly lost, and the army would become the absolute masters of the state.

LXV. It is true indeed that there have been some common-wealths in the world in which this event has not taken place in consequence of the cause above-mentioned, but the army of the state has continued to pay obedience to the orders of its legislative assembly. But wherever this has been the case, it has been the effect of some very extraordinary and peculiar circumstances which have prevented the other and more natural event. In some of these instances the governing senate, or council of the common-wealth, has taken care to keep the different bodies of which the army has been composed, quite separate from each other, without any convenient opportunities of conferring or communicating with each other ; by which means it has become difficult for them to unite in a common cause against their employers : and, further, the several bodies of which it has been composed, have been

Some exceptions may be found to the last observation concerning the danger of the army's usurping the whole power of the state.

Peculiar circumstances, by which such exceptions may be accounted for.

been raised in different provinces, and have been made dependant on, or subject to, the civil powers of the several different provinces to which they respectively belonged; by which means the men who have composed these different bodies have had as little original acquaintance with each other as possible, and have been under less temptation to associate together and engage in any common design than if they had been connected together by a long and familiar intercourse and a subjection to the same governing body: and, lastly, these commonwealths have been possessed of capital cities whose situations have been so advantageous and strong by nature that there has been no danger of their being surprized by a sudden attempt of an enemy, and consequently no necessity to admit garrisons into them for their defence in time of peace. The republicks of Venice and Holland are instances of commonwealths that have possessed these advantages; and particularly that of Holland. For there the situation of the places in which the troops are quartered is such that, if the troops were to rebel against the state, the government would have it in their power to drown them by laying those places under water, or to starve them by cutting

cutting off the means of supplying them with provisions, they being never quartered in any towns which, by their situation in fertile districts of land, command a sufficient quantity of provisions for the support of their inhabitants. So that those garrisons depend intirely upon the governing powers of the country for their subsistence.

LXVI. I have now finished the sketch I proposed to give of the constitution of the English government; the leading principles of which have been borrowed from the practice of the ancient inhabitants of Germany, as any one will be easily convinced who shall read with attention the excellent account, given by Tacitus, of the manners of the ancient Germans. This noble system was, therefore, discovered in the woods.*

The principles of the English constitution are derived from the manners of the ancient Germans.

LXVII. As all the productions of human wisdom and contrivance are liable to decay in course of time, this admirable government, of which we have been treating, will, one day or other, come to an end, and the liberty of England will be lost. This has been the fate of all the other

Of the future destruction of the free constitution of England.

* *De minoribus rebus, says this judicious author, principes consultant, de majoribus omnes; ita tamen ut ea quoque quorum penes plebem arbitrium est, apud principes prætrahantur.*

governments that have hitherto appeared in the world, the wisest and most powerful not excepted. Those of Rome, Lacedæmon, and Carthage, are no more. How then can it be supposed that the government of England will not, in some future period, experience the same catastrophe? But at what time, and in consequence of what previous accidents, this melancholy event will take place, cannot be determined with certainty. I am, however, inclined to be of opinion that it will happen whenever the legislative assembly of the nation shall become more corrupt, or regardless of the publick welfare, than the king, or executive magistrate, and the persons whom he employs as his delegates and assistants in the administration of publick business. Whenever this shall be the case, the people at large will lose their respect for, and confidence in, their own elected representatives, and repose themselves, for the protection of their persons and property, on the honour, and wisdom, and moderation, of their sovereign.

LXVIII. Whether, or no, the English do at this time enjoy this high degree of liberty which I have described, may, perhaps with some

Of the circumstances that are likely to produce this fatal event.

some people, be matter of doubt. Nor will I undertake to determine whether they do, or do not, enjoy it. It is sufficient for my purpose that this degree of liberty is established among them by their laws, and consequently that, *so far* as their laws are put in force, *so far* they must enjoy it. How far that is, or in what degree their laws are put in execution, and in what instances they are violated or neglected, I shall not inquire.

LXIX. I do not mean, by this description of the advantages of the English government, to throw any contempt upon the other governments which we see established in Europe, nor to insinuate that the view of this very high degree of political liberty ought to mortify the subjects of other states who enjoy but a moderate share of that liberty. Such an intention would be very inconsistent with my principles, who have always been of opinion that excessive advantages of any kind are not calculated to make men happy, insomuch that even a very uncommon share of understanding and mental ability is not desirable, but that mankind always find their account best in the possession of moderate advantages of all kinds, whether

whether they be personal endowments, or the gifts of fortune, or the blessings arising from society or civil government.

A remark on
Mr. Harrington's
Oceana.

LXX. Mr. Harrington in his famous treatise on government, called *Oceana*, has examined, with great attention and at great length, the subject that has been considered in the foregoing pages, or the nature and limitations of that form of government which is best calculated for the preservation of political liberty; and, in particular, he has endeavoured to find out, what is the highest degree of political liberty which it is possible to establish in a civil society, and by what means it may be established. But we may truly say of him, that he has sought for this high degree of liberty in a visionary common-wealth of his own creating, after having seen it, without knowing it, in the limited monarchy of England, of which he was a subject. His conduct in this respect may be compared to that of a founder of a new city, who, having the delightful and most convenient situation of Byzantium before his eyes, should nevertheless chuse to build his new city in the neighbouring, but much less advantageous, situation of Chalcedon.

F I N I S.

Montesquieu, Charles Louis de Secondat de,

A view of the English constitution Being a translation of the sixth
chapter of the eleventh book of his celebrated treatise intituled, l'esprit
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